IN THE HIGH COURT OF JUDICATUTRE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1980 OF 1999

The Board of Trustees of the)
Port of Mumbai, a Statutory)
Corporation constituted under)
The Major Port Trust Act, 1963,)
having its registered office at)
Shoorji Vallabhdas Marg,)
Ballard Estate, Bombay 400 038.).. Petitioner

Vs.

1. Shri Gurumukh Sevakram Raijuria,)
Savak Mahal, Barak No.510,)
Room No.1, Ulhasnagar No.2,)
Dist.- Thane.)

2. Shri Ashok Hari Chavan,)
Ramduth Building No.3, Room No.335,)
Mahadeo Palav Marg, Curry Road,)
Mumbai - 400 002.)

3. Shri Keshav Vitthal Mhatre,)
Thawar Mansion No.2, Room No.5,)
Ground Floor, Mazgaon,)
Mumbai - 400 010.)

4. Shri Dyanand Maruthi Lande,)
Rangawalala Compound, School Wadi,)
Mount Road, Mazgaon,)
Mumbai - 400 010.)

5. Shri Suresh Bhikaji Chavan,)
Ram Nagar, Alli Mulla,)
Chawl No.13/9, Kanjur, Bhandup,)
Mumbai - 400 078.)

6. Union of India,)
copy of the Petition to be served)
at Aaykar Bhavan, New Marine Lines)
Mumbai.)..Respondents

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Shri Shyam Mehta i/b M/s.Little & Co. for the petitioner.

Shri K.P.Anilkumar for the respondents.

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WITH

WRIT PETITION NO.1327 OF 2000

Shri Dnyandeo Maruti Lande,)
Rangawala Compound, School Wadi,)
Mount Road, Mazgaon, Mumbai - 400 010.).. Petitioner

Vs.

1. The Board of Trustees of the)
Port of Mumbai, a Statutory)
Corporation constituted under)
The Major Port Trust Act, 1963,)
having its registered office at)
Shoorji Vallabhdas Marg,)
Ballard Estate, Bombay 400 038.)

2. Union of India,)
copy of the Petition to be served)
at Aaykar Bhavan,)
New Marine Line, Mumbai.).. Respondents

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Shri K.P.Anilkumar for the petitioner.

Shri Shyam Mehta i/b M/s. Little & Co. for the respondents.

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CORAM : R.M.S.KHANDEPARKAR,J

DATED : 30th SEPTEMBER, 2004.

JUDGMENT :

1. Since the common question of law and facts arise in both the petitions, they were heard together and are being disposed of by this common judgment.

2. The petitioner in Writ Petition No.1980 of 1999 is a Board of Trustees of the Port of Mumbai (hereinafter called as "the Corporation") whereas the Petitioner - Shri Dnyandeo Maruti Lande in Writ Petition No.1327 of 2000 is the workman employed in the Corporation (hereinafter called as "the

workman".).

3. The Corporation challenges the award passed on 17th August, 1991 by the Central, Industrial Tribunal No.1, Mumbai, in five References bearing Nos.CCIT-39, 40, 41, 42 and 45 of 1993 in relation to the action of dismissal of the workmen by the Corporation. By the impugned award, the Tribunal has held that though the materials on record undoubtedly disclose the commission of misconduct alleged against the workmen, yet the order of dismissal passed against them cannot be sustained "on technical grounds, viz. non-examination of the Panchas, Enquiry Officer not considering the order of discharge passed by the Criminal Court, and the punishment ordered by the Chairman is in violation of the Regulation 23". However, while ordering the reinstatement, the Industrial Tribunal has held that the workmen would not be entitled for backwages. The workman has challenged the impugned award as far as it relates to the refusal of backwages to the said workman.

4. Few facts relevant for the decision are that, the two instances of theft of piston rings of the Corporation were detected, one in relation to the theft dated 19th February, 1987 pertaining to 125 boxes of Piston Rings valued at Rs.24,750/- allegedly by the respondent Nos.1, 2 and 5 in the petition by the Corporation and another incident in relation to

the theft committed on 16th & 17th February, 1998 related to 168 sets of piston rings valued at Rs.33.260/- involving the respondent Nos.3 and 4 in the Petition filed by the Corporation. The workman is Respondent No.4 in the Petition filed by the Corporation. The criminal case was filed against the workers, who were allegedly involved in the commission of offence of theft in relation to the incidence dated 19th February, 1987. The respondents No.1, 2 and 5 were acquitted in the said criminal case on 13th October, 1991. The respondent Nos.3 and 4 were discharged on 13th December, 1990. The respondent Nos.1, 2 and 5 were subjected to the disciplinary proceedings in relation to the charge of theft committed on 19th February, 1987, whereas the accused Nos.2, 3, 4 and 5 were subjected to disciplinary proceedings in relation to the charge of theft committed on 16th/17th February, 1998.

5. The challenge to the impugned award by the Corporation is mainly on the ground that, once the Tribunal had arrived at the conclusion that the misconduct against the workmen had been established, it was not open for the Tribunal to interfere with the punishment imposed upon the workmen by the management unless the Tribunal has held that the punishment imposed was shockingly disproportionate to the proved misconduct. Drawing attention to the paragraph 23 of the impugned award, the learned advocate for the

Corporation has submitted that the Tribunal has interfered with the punishment imposed upon the workmen solely on the basis of technical grounds like non examination of panchas and non consideration of discharge order by the enquiry officer and not for want of sufficient evidence pertaining to the charge of misconduct and not on the ground that the proved misconduct does not warrant quantum of punishment imposed upon the workman. It is his further contention that the finding as regards the misconduct by the workmen had attained finality as against all the workmen except the workman in Writ Petition No.1327 of 2000, as only the said workman has chosen to challenge the said award while others have accepted the same. As regards the said workman, it is sought to be contended that his discharge in the criminal case has nothing to do with the disciplinary proceedings against him as the disciplinary proceedings relate to the charge on account of theft committed on 16th and 17th February, 1998 whereas the acquittal of the said workman in criminal case was in relation to the charge of theft which was committed on 19th February, 1987. It is his further contention that mere non-examination of the panchas cannot be a ground to interfere with the punishment imposed by the Corporation when there is sufficient evidence on record which clearly establishes the misconduct on the part of the workman. As regards the violation of the Regulation No.23, it is the contention that there was

no such violation at all on the part of the Corporation or its Chairman as there was no appeal filed by the said workmen and the appeal which was filed by the workman i.e. the respondent No.4 in Writ Petition No.1980 of 1999, was addressed to the Chairman and not to the Central Government, and, therefore, the Corporation could not be blamed for the fault of the workman. On the other hand, the learned advocate appearing for the workmen has submitted that non-examination of the panchas was fatal to the case of the management, and, therefore, no fault can be found with the impugned award whereby the Tribunal has interfered with the punishment imposed upon the workmen, and in that regard, reliance is placed in the decision of the Apex Court in **State of U.P v. Hanif,** reported in AIR 1992 SC 1121. The learned advocate for the workmen further placing reliance in the decision of the Apex Court in the matter of **Electronics Corporation of India v. G. Muralidhar,** reported in 2001 II CLR 29 as well as in the matter of **Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank & Ors.,** reported in JT 1995(2) SC 74, has contended that the order regarding punishment having been passed by the appellate authorities, the workman is deprived of his right of appeal and that itself would warrant reinstatement with the backwages.

6. Plain reading of the impugned award discloses that the Tribunal has, undoubtedly, arrived at the

conclusion that the analysis of the materials placed before it disclosed that the charge sheeted employees had undoubtedly committed the alleged misconduct. In other words, the Tribunal was satisfied on the analysis of the materials placed before it on record about the alleged misconduct on the part of the workmen/employees. Indeed, even in the course of argument, the learned advocate appearing for the workmen has not been able to point out any infirmity or perversity in the said finding nor he could demonstrate that the said finding could be said to be either contrary to the materials on record or that the materials on record are not sufficient to warrant such finding. Only contention which was forcefully argued was regarding failure on the part of the management to examine the panchas and to place on record the order of acquittal / discharge from the criminal case. As already observed above, the discharge or acquittal was in relation to the incident which was said to have occurred on 19th February, 1987. The said criminal case had nothing to do with the disciplinary proceedings which were initiated in relation to the charge pertaining to the theft committed on 16th/17th February, 1998. Undoubtedly, the respondent Nos.1 to 5 were facing different proceedings in relation to the charge which related to the incident of 16th/17th February, 1998, while only the respondent No.1 was subjected to the disciplinary action in relation to the incidence which had occurred on 19th February,

1987. Being so, either acquittal or discharge in the criminal case relating to the charge different from the charge in the disciplinary proceedings cannot enure to the benefit of the respondent Nos.2 to 5 in relation to the disciplinary proceedings in question as there is no connection whatsoever between the incidents which are subject matter of the two proceedings. Undoubtedly, there cannot be any writ against mere finding in the award or judgment. However, here is a case where the reinstatement has been granted under the award without any relief regarding backwages. And exactly for that reason, the respondent No.4 has challenged the said award in Writ Petition No.1327 of 2000. Nothing prevented the respondent Nos.1, 2, 3 and 5 from challenging the said award along with the said finding, and having not done so, as rightly submitted by the learned advocate for the Corporation, the said finding must be deemed to have attained finality as regards the respondent Nos.1, 2, 3 and 5.

7. There is yet another reason for rejecting the arguments advanced on behalf of the workmen in relation to the above referred point. Once the Tribunal comes to a conclusion, on assessment of the materials on record, that those materials disclose that the employees are guilty of misconduct alleged against them and the employees are unable to disclose any perversity or arbitrariness in such finding, the

Tribunal would not be justified in interfering with the punishment imposed upon the employees unless the Tribunal comes to a conclusion that the punishment imposed is shockingly disproportionate to the proved misconduct. Mere failure on the part of the management to produce some more evidence in support of the allegation of misconduct on the part of the employees can not be a relevant factor to hold punishment imposed to be disproportionate to the proved misconduct. Non-examination of the panchas or non consideration of the factor in relation to the discharge or acquittal from the criminal case would relate to the matters pertaining to sufficiency of materials to prove the misconduct alleged against the employees, but it would not be either a mitigating factor or the relevant factor to decide quantum of punishment to be imposed upon the employees for the proved misconduct.

8. Undoubtedly, the order imposing penalty on the employees entitles the employees to prefer an appeal in terms of the Regulations 8 to 11, and the Regulation 23 deals with the procedure in relation to the special circumstances. It provides thus:-

> "23. Appellate Authorities in special circumstances notwithstanding anything contained in regulation:

(i) an appeal against an order in common proceeding shall lie to the authority to which the authority functioning as the disciplinary authority is immediately subordinate.

(ii) where the person who made the order appealed against becomes by virtue of his subsequent appointment as the Chairman, an appeal against such order shall lie to the Central Government and the Central Government in relation to that appeal shall be deemed to be the appellate authority for the purpose of this regulations."

Plain reading of the clause (i) of the said Regulation 23 would disclose that the appeal would lie to the authority to which the authority functioning as the disciplinary authority is immediately subordinate. Undoubtedly, therefore, if the disciplinary authority is subordinate to the Chairman of the Board then the appeal would lie to the Chairman. However, when the order is passed by the Chairman, an appeal would lie to the Central Government in terms of the clause (ii) of the said Regulation 23. The Tribunal, in this regard, has observed that the disciplinary authority for the workmen was the Vice Chairman, and the appeals filed against his orders, were required to be heard

and disposed of by the Chairman, but, the Chairman, at the relevant time, i.e. at the time of passing of the order, was none other than the same person who was the Vice Chairman, who had passed the order in his capacity as the Disciplinary Authority. In other words, the order in relation to the disciplinary action as well as the order in appeal has been passed by the one and the same person though with two different designations. It is to be noted that the appeals were stated to have been filed by the two persons viz. the respondent Nos.2 and 4. However, the Corporation in its petition has made a categorical statement that only the respondent No.2 had filed the appeal and the respondent Nos.3 to 5 had not filed any such appeal. As regards the respondent No.1, the Corporation has expressed the absence of knowledge regarding filing of an appeal by him. It is admitted by the Corporation that the appeal filed by the respondent No.2 was dismissed by the Chairman.

9. Undoubtedly, failure to give an opportunity to file appeal would result in denial of natural justice when the statute provides remedy of an appeal and the same is denied in one way or the other to the aggrieved party. However, in the case in hand, it is apparent that an appeal is to be filed to the authority to which the disciplinary authority is immediately subordinate, and the clause (i) of the Regulation 23 is very clear in that regard. The

Clause (ii) however specifies that if the order is passed by the Chairman then the appeal would lie before the Central Government. In the case in hand, the incumbent of the office of the disciplinary authority subsequently became the Chairman and inspite of the knowledge about the same, the appeal was filed by the workmen before the said Chairman. Certainly, the Chairman, apart from disposing such appeal, would not have done anything more and on being aggrieved by such order, a party could have preferred an appeal before the Central Government. Admittedly, no such appeal was filed before the Central Government. Failure of the workman to take appropriate steps in respect of filing of an appeal cannot be a ground to accuse or blame the management of having denied an opportunity to file the appeal. The Regulation clearly provides for an appeal to the Central Government against the order passed by the Chairman. There is no explanation as to what prevented the respondent No.2 from approaching the Central Government to file an appropriate appeal and if he has not done so, how he could blame the management of having denied the opportunity. The contention therefore in relation to the failure on the part of the management to give opportunity to file an appeal or to exercise statutory right of an appeal by the workmen is devoid of substance in the facts and circumstances of the case. Besides, the same cannot be a justification for interference in the quantum of

punishment imposed by the management for the proved misconduct of the employees.

10. The decision of the Apex Court in **Hanif's case (supra)** is in relation to the criminal case under the Prevention of Food Alteration Act, 1954 and not in relation to any disciplinary proceeding. It is well settled law that the criminal charge has to be proved beyond reasonable doubt and in the proceedings under the Prevention of Food Adulteration Act, the evidence of Food Inspector needs to be corroborated by an independent witness. Certainly, in case of seizure and attachment of the food products subjected to the test by Public Analyst needs to be established by cogent evidence. In fact, the Apex Court in **Hanif's case (supra)** has clearly held that it is not the law that the evidence of Food Inspector must necessarily need corroboration from independent witnesses. At the same time, however, it was observed that, if in a given case where the factum of the very purchase is put in question and personal allegations are made against the Food Inspector, perhaps it may be necessary for the prosecution to dispel the doubt and to examine the Panch witness seeking corroboration to the evidence of the Food Inspector. That does not lead to the conclusion that invariably the allegations in regard to the theft must necessarily be established by examining the panchas. Even in a criminal case, the incidence of theft can be established

independently of the pancha if there is sufficient and cogent evidence to establish the same.

11. The decision of the Apex Court in **Electronics Corporation of India's case (supra)** was to the effect that the termination order could not be sustained as the employee was deprived of his right to appeal. In that case, the disciplinary order was passed by CMD of the Corporation when in fact, CMD was not the disciplinary authority but was the appellate authority and that therefore, it was held that "undoubtedly a right of appeal which was otherwise available to the respondent, has been denied." That is not the case in the matter in hand. Undisputedly, the disciplinary order was passed by the authority which was infact the disciplinary authority and it was not passed by the appellate authority, nor it is the case of the workmen that the disciplinary order was passed by a person who was not empowered to pass disciplinary order or that it was passed by the authority to whom lies the appeal from order of the disciplinary authority. Being so, the decision in **Electronics Corporation of India (supra)** is of no help to the workmen.

12. In **Surjit Ghosh's case (supra)**, it was held that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority but when an appeal is

provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the rules and regulations. Here again, the facts in the case in hand nowhere warrant application of ratio of this case as it is nobody's case in the matter in hand that the punishment was imposed by the appellate authority and not by the disciplinary authority.

13. The fall-out of the above discussion is that while the finding arrived at by the Tribunal about the analysis of the materials on record disclosing the misconduct alleged against the workmen having been proved, is clearly borne out from the records and does not call for any interference by this Court in writ jurisdiction, however, the interference by the Courts below in the quantum of punishment on the alleged technical grounds, viz. non-examination of the panchas, non-consideration of discharge order of the criminal Court and imposition of punishment by the Chairman in violation of the Regulation 23, cannot be approved and therefore the same cannot be sustained.

14. The facts on record therefore would disclose that the order of punishment was not passed by the authority other than the disciplinary authority nor it

was passed by the Chairman. The order regarding punishment was passed by the Vice Chairman who is the disciplinary authority for the workmen in question. Being so, the finding regarding violation of the Regulation 23 by the Chairman and passing of the order regarding punishment is totally contrary to the materials on record.

15. In the result, therefore, the impugned award interfering with the quantum of punishment imposed by the Management on the workmen on the charge of proved misconduct cannot be sustained and is liable to be quashed and set aside. Consequently, the question of reinstatement and/or backwages does not arise. At the same time, it is to be noted that, at the time of the admission of the Petition, at the instance of the Corporation, though the execution of the order was stayed, subsequently by an order dated 29th October, 1999 in exercise of powers under Section 17-B of the Industrial Disputes Act, 1947, the Petitioner was directed to pay wages at the rate of last drawn wages to the concerned workmen from the date of the award i.e. 17th August, 1998, and it is not in dispute that the wages accordingly are paid to the workmen till this day. There has been no amendment to the petition asking for refund of the wages already paid consequent to the said order passed in the petition, or reserving right to claim refund of such amount in case of success of the petitioner in the petition. In the

circumstances, the petitioner cannot be held to be entitled for an order for refund of the amount already paid to the workmen while allowing the Petition, and the order in the Petition therefore is restricted to the setting aside of the impugned award to the extent it interferes with the quantum of punishment while confirming the finding regarding the proved misconduct, and further confirming the punishment of dismissal imposed upon the workmen by the Management. The Writ Petition No.1980 of 1999 therefore is hereby allowed and the rule is made absolute in above terms with no order as to costs. The Writ Petition No.1327 of 2000 is dismissed and the rule therefore is discharged with no order as to costs.